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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,211	08/26/2003	Everett T. Conaway	2537.110	1906
7590	10/05/2004		EXAMINER	
Matthew A. Pequignot, Esquire Hall, Priddy, Myers & Vande Sande Ste. 200 10220 River Road Potomac, MD 20854			PARSLEY, DAVID J	
			ART UNIT	PAPER NUMBER
			3643	
DATE MAILED: 10/05/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/647,211	CONAWAY, EVERETT T.
	Examiner David J Parsley	Art Unit 3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 26 August 2003.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-38 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-38 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 26 August 2003 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12-2-03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **Detailed Action**

### ***Claim Objections***

1. Claim 22 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 20.

When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 6/1, 16-19, 26-27, 31-33 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 1,217,393 to Berg.

Referring to claim 1, Berg discloses a defeathering apparatus comprising, a plurality of elongated picking elements – the bristles at 26 and 27, comprising structures selected from the group consisting of, filaments, bristles, wires and substantially rigid threads – see for example figures 1-2.

Referring to claims 2 and 27, Berg discloses the picking elements – proximate 26,27, have a length to diameter ratio of at least approximately 10:1 – see for example figures 1-2.

Referring to claim 6/1, Berg discloses the picking elements have first and second ends – see figures 1-2, and wherein the first ends are affixed to at least a rotatable unit – at 3 or 4 or 6 or 7 or 16 or 17 or 18 or 19 and 28-29 – see for example figures 1-2.

Referring to claim 16, Berg discloses the picking elements – proximate 26,27, are affixed to the rotatable unit in closely packed clusters – see for example figures 1-3.

Referring to claim 17, Berg discloses the rotatable unit comprises a rotatable disk – at 6' or 7 or 16 or 17, and includes a plurality of picking element clusters – proximate 26,27, spaced apart from another, each of the picking element clusters comprising approximately 50-150 picking elements – see for example figures 1-3.

Referring to claims 18-19, Berg discloses the plurality of picking clusters extend substantially perpendicular at angles of between 45 and 90 degrees from a face of the rotatable disk – see for example figures 1-3.

Referring to claim 26, Berg discloses a method of defeathering poultry comprising, rotating a plurality of elongated picking elements – proximate 26,27, about an axis – proximate 18,19, and causing a poultry carcass to contact the rotating plurality of elongated picking elements – see page 2 lines 85-125, the elongated picking elements comprising structures selected from the group consisting of filaments, fibers, bristles, wires and substantially rigid threads – see for example figures 1-3.

Referring to claim 31, Berg discloses passing a poultry carcass between opposing banks of rotating units – at 3-7 and/or 16-21 and/or 28-29, having picking elements – proximate 26,27, extending therefrom – see for example figures 1-3.

Referring to claim 32, Berg discloses causing oppositely facing rotating units to counter rotate one with respect to the other – see for example the arrows indicating rotational direction in figure 2.

Referring to claim 33, Berg discloses a defeathering apparatus comprising, a plurality of elongating picking elements – proximate 26,27, comprising structures selected from the group consisting of filaments, bristles, wires, and substantially rigid threads – see for example figures 1-3, the plurality of elongated picking elements being connected to and extending longitudinally from a plug unit – at 18-19,28-29, and a rotatable disk – at 16,17 and/or 6',7, having at least one aperture – see for example figures 1-3, the plug unit being selectively connectable to the rotatable disk via the aperture – see for example figures 1-3.

Referring to claim 37, Berg discloses the picking elements are at least substantially flexible and possess at least a partial memory quality for returning the elements to a substantially original configuration after deflection – see for example figures 1-3 and pages 1-2.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berg as applied to claims 2 or 27 above, and further in view of U.S. Patent No. 5,538,467 to Wodajo. Berg does not disclose the picking elements have diameters of between 10 and 240 mils. Wodajo does disclose the picking elements – at 12,62, are between 10 and 240 mils – see for example column 3 lines 1-36. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Berg and add the picking elements having a diameter of between 10 and 240 mils of Wodajo, so as to allow for the picking elements to be strong and flexible to allow for effective brushing of the carcass.

Claims 4-5, 6/5, 7-11, 16-19, 29-30 and 37-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berg as modified by Wodajo as applied to claims 3 or 28 or 33 above, and further in view of U.S. Patent No. 6,605,308 to Shane et al.

Referring to claims 4-5 and 29-30, Berg as modified by Wodajo does not disclose the picking elements are comprised of a crystalline resin polymer base material/nylon. Shane et al. does disclose the picking elements – proximate 14, are comprised of a crystalline resin polymer base material/nylon –see for example column 8 lines 54-64. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Berg as modified by Wodajo and add the picking elements made of nylon of Shane et al., so as to allow for the picking elements to be both flexible and durable for repeated use.

Referring to claim 6/5, Berg as modified by Wodajo and Shane et al. further discloses the picking elements have first and second ends – see figures 1-2 of Berg, and wherein the first ends

are affixed to at least a rotatable unit – at 3 or 4 or 6' or 7 or 16 or 17 or 18 or 19 and 28-29– see for example figures 1-2 of Berg.

Referring to claim 7, Berg as modified by Wodajo and Shane et al. further discloses the rotatable unit is connected to a motor driven system – proximate 12-14, for causing rotation of the rotatable unit – see for example page 1 lines 60-81 of Berg.

Referring to claims 8, Berg as modified by Wodajo and Shane et al. further discloses a first bank of rotatable units – at 3-7 and/or 16-21 and/or 28-29, having a plurality of the picking elements affixed thereon – see for example figures 1-2 of Berg, a second bank of rotatable units – at 16-21, having a plurality of the picking elements affixed thereon – see for example figures 1-2 of Berg, the second bank of rotatable units located spaced apart from and substantially opposite the first bank of rotatable units such that the first and the second banks of rotatable units define a space therebetween for passage of a line of poultry – see for example figures 1-3 of Berg.

Referring to claim 9, Berg as modified by Wodajo and Shane et al. further disclose the oppositely facing rotatable units – at 3-7 and/or 16-21 and/or 28-29, rotate in opposite directions one from the other – see for example the arrows indicating direction of rotation of items 26,27 in figure 2 of Berg.

Referring to claim 10, Berg as modified by Wodajo and Shane et al. further disclose adjacently located rotatable units in opposite directions from the other – see for example the arrows indicating direction of rotation of items 26,27 in figure 2 of Berg.

Referring to claim 11, Berg as modified by Wodajo and Shane et al. further discloses the first and the second banks of rotatable units each include at least two rows – along shafts 18 and

19, and at least four columns – extending vertically through items 3,16 and 3,17 as seen in figures 1-3 of Berg.

Referring to claim 16, Berg as modified by Wodajo and Shane et al. further discloses the picking elements – proximate 26,27, are affixed to the rotatable unit in closely packed clusters – see for example figures 1-3 of Berg.

Referring to claim 17, Berg as modified by Wodajo and Shane et al. further discloses the rotatable unit comprises a rotatable disk – at 6' or 7 or 16 or 17, and includes a plurality of picking element clusters – proximate 26,27, spaced apart from another, each of the picking element clusters comprising approximately 50-150 picking elements – see for example figures 1-3 of Berg.

Referring to claims 18-19, Berg as modified by Wodajo and Shane et al. further discloses the plurality of picking clusters extend substantially perpendicular or at angles of between 45 and 90 degrees from a face of the rotatable disk – see for example figures 1-3 of Berg.

Referring to claim 37, Berg as modified by Wodajo and Shane et al. further discloses the picking elements are at least substantially flexible and possess at least a partial memory quality for returning the elements to a substantially original configuration after deflection – see for example figures 1-3 and pages 1-2 of Berg.

Referring to claim 38, Berg as modified by Wodajo and Shane et al. further discloses the first and second banks of rotatable units are configured in orientations selected from the group consisting of horizontal, vertical and angular – see for example figures 1-3 of Berg.

Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berg as modified by Wodajo and Shane et al. as applied to claim 10 above, and further in view of U.S. Patent No. 3,132,372 to Masters et al.

Referring to claim 12, Berg as modified by Wodajo and Shane et al. further discloses the first and second banks of rotatable units is connected to a motor driven system – see for example proximate items 12-14 and page 1 lines 60-81 of Berg. Berg as modified by Wodajo and Shane et al. does not disclose the rate of rotation of the rotatable units is between 200 and 2000 revolutions per minute. Masters et al. does disclose the rate of rotation of the rotatable units is between 200 and 2000 revolutions per minute – see for example column 5 lines 4-20. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Berg as modified by Wodajo and Shane et al. and add the rotatable units rotating between 200 and 2000 revolutions per minute of Masters et al., so as to allow for the ensure the desired picking forces are exerted on the carcass during use.

Referring to claim 13, Berg as modified by Wodajo, Shane et al. and Masters et al. further discloses the rotatable unit of the first and second banks of rotatable units is adjustable in orientation thereby to provide tailorability of the motorized picking apparatus for defeathering multiple sizes of poultry – see for example page 2 lines 9-57 of Berg.

Referring to claim 14, Berg as modified by Wodajo, Shane et al. and Masters et al. further discloses the space between the first and the second banks of rotatable units is adjustable in size – see for example page 2 lines 9-57 of Berg.

Referring to claim 15, Berg as modified by Wodajo, Shane et al. and Masters et al. further discloses a fluid line – at 79, having at least one fluid jet – at 80, for providing a water

spray source to the first and the second banks of rotatable units – see for example figures 1-5 of Masters et al.

Claims 20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berg as applied to claim 1 above, and further in view of U.S. Patent No. 6,733,379 to Tsang.

Referring to both claims 20 and 22, Berg does not disclose the picking elements are crimped along a substantial portion of their length. Tsang does disclose the picking elements – at 36, are crimped along a substantial portion of their length – see for example figures 1-2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Berg and add the picking elements being crimped of Tsang, so as to allow for effective scraping of the carcass during use.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Berg as applied to claim 1 above, and further in view of Masters et al. Berg does not disclose the picking elements are serrated along a substantial portion of their length. Masters et al. does disclose the picking elements – at 42, are serrated along a substantial portion of their length – see for example figures 1-4. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Berg and add the picking elements being serrated of Masters et al., so as to allow for effective scraping of the carcass during use.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Berg as applied to claim 1 above, and further in view of U.S. Patent Application Publication No. 2002/0139385 to Gueret. Berg does not disclose the picking elements are corkscrewed along a substantial portion of their length. Gueret does disclose bristles being corkscrewed along their length – see for example paragraph [0034]. Therefore it would have been obvious to one of ordinary skill in

the art to take the device of Berg and add the picking elements being corkscrewed of Gueret, so as to allow for effective scraping during use. Further, changing the shape of a component from that of the prior art does not render a claim non-obvious as seen in, *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Applicant does not disclose that the corkscrew shape of the picking elements solves any particular problem or is done for any particular purpose in relation to other shapes of the picking elements.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Berg as applied to claim 1 above, and further in view of GB Patent No. 2098454. Berg does not disclose the picking elements are tapered along a substantial portion of their length. The British patent does disclose the picking elements – at 3-5, are tapered along a substantial portion of their length – see for example figures 1-2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Berg and add the picking elements being tapered of the British patent, so as to allow for effective scraping of the carcass during use.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Berg as applied to claim 1 above, and further in view of U.S. Patent No. 2,977,628 to Barker et al. Berg does not disclose the picking elements have substantially rounded tips. Barker et al. does disclose the picking elements – at 20, have substantially rounded tips – see for example figures 1-2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Berg and add the picking elements having rounded tips of Barker et al., so as to allow for effective scraping of the carcass during use.

Claims 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berg as applied to claim 33 above, and further in view of U.S. Patent No. 6,605,308 to Shane et al.

Referring to claims 34-35, Berg does not disclose the picking elements are comprised of a crystalline resin polymer base material/nylon. Shane et al. does disclose the picking elements – proximate 14, are comprised of a crystalline resin polymer base material/nylon – see for example column 8 lines 54-64. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Berg and add the picking elements made of nylon of Shane et al., so as to allow for the picking elements to be both flexible and durable for repeated use.

Referring to claim 36, Berg as modified by Shane et al. further discloses the picking elements are at least substantially flexible and possess at least a partial memory quality for returning the elements to a substantially original configuration after deflection – see for example figures 1-3 and pages 1-2 of Berg.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to defeathering devices/methods in general:

U.S. Pat. No. 564,587 to Black – shows rotating brush assembly

U.S. Pat. No. 663,449 to Lebiedzinski – shows rotating brush assembly

U.S. Pat. No. 3,236,656 to Wittig – shows rotating brush assembly

U.S. Pat. No. 3,585,675 to Crane – shows picking fingers

U.S. Pat. No. 3,596,309 to Vertegaal – shows rotatable picking fingers

U.S. Pat. No. 3,628,218 to Simonsen et al. – shows rotatable brush assembly

U.S. Pat. No. 3,969,790 to Smorenburg – shows spray assembly

U.S. Pat. No. 4,179,772 to Harben – shows rotatable picking fingers

U.S. Pat. No. 4,329,760 to van Mil – shows rotatable disk and picking fingers

U.S. Pat. No. 4,514,879 to Hazenbroek – shows rotatable picking fingers

U.S. Pat. No. 5,184,973 to Orlando et al. – shows rotatable brush assemblies

U.S. Pat. No. 5,853,320 to Wathes et al. – shows rotatable picking fingers

EP Pat. No. 0118315 – shows rotatable brush assembly

FR Pat. No. 2363993 – shows rotatable picking fingers

FR Pat. No. 2653302 – shows rotatable picking fingers

FR Pat. No. 2677523 – shows rotatable picking fingers

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on 9hr compressed.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3643

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DP

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Art Unit 3643

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9/30/04